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DISTRICT IV

February 22, 2019

To:

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1055

Ashley M. Ford v. Jennifer Heberling (L.C. # 2017CV180)

Before Lundsten, P.J., Blanchard and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jennifer Heberling appeals a judgment for costs and attorney's fees awarded against her in a mandamus action. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Ashley Ford worked as a cosmetologist at an establishment operated by Heberling. Ford filed a complaint seeking a writ of mandamus to compel Heberling to provide a manager's verification of Ford's hours of employment that was necessary for Ford to establish that she had satisfied a requirement for her own state licensure as a cosmetology manager. The complaint further sought an award of costs and attorney's fees that Ford had incurred by filing suit to obtain the verification.

Heberling provided the requested verification shortly after the mandamus action was filed, leading the circuit court to conclude that "a specific mandamus order was no longer necessary." However, the court found that Heberling had failed to comply with discovery requests during the pendency of the action, and that Ford had incurred \$3,275 in legal fees and \$268 in costs by having to file suit to obtain the verification. The court issued a judgment against Heberling for \$3,543.

On this appeal, Heberling argues that: (1) mandamus was not an available remedy against her because she was not a public official; and (2) there is no statute authorizing the recovery of costs or attorney fees in a mandamus action.

As to the availability of mandamus, we note that the circuit court did not enter any writ or other order directing Heberling to file a verification of Ford's hours of employment. Essentially, the circuit court treated that issue as moot since Heberling had already filed the verification by the time of trial. Therefore, there is no circuit court ruling granting a writ of mandamus for us to review on this appeal.

As to the lack of statutory authority for the award of costs and attorney's fees, we conclude that Heberling has forfeited her argument by failing to raise the issue below. This court

will generally not consider issues raised for the first time on appeal so that we do not ““blindsided trial courts with reversals based on theories which did not originate in their forum.”” *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476 (quoted source omitted). In order to preserve an issue, a party must raise it “with sufficient prominence such that the trial court understands that it is called upon to make a ruling.” *Schwittay v. Sheboygan Falls Mut. Ins. Co.*, 2001 WI App 140, ¶16 n.3, 246 Wis. 2d 385, 630 N.W.2d 772.

To be clear, Heberling did make other attorney’s fees and cost arguments before the circuit court. Heberling argued to the circuit court that she did not believe she should have to pay Ford the costs and attorney’s fees arising from the action because: (1) Ford had other avenues besides a lawsuit that she could have used to obtain relief, such as filing a free complaint with the state licensing board, and (2) Heberling had actually provided various forms of verification prior to the lawsuit. But Heberling did not raise any objection to the circuit court’s statutory authority to grant costs and attorney’s fees.

With respect to an award of attorney’s fees or costs against Heberling relating to this appeal, no such fees or costs will be considered.

IT IS ORDERED that the judgment for costs and attorney’s fees is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals